

**THE UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO.: 1:21CR414
)	
Plaintiff,)	JUDGE JOHN ADAMS
)	
v.)	<u>ORDER</u>
)	
JAMES DAILEY,)	
)	
)	
Defendant.)	

Pending before the Court is Defendant James Dailey's motion in limine (Doc. 53) and a supplement to his motion to continue trial in this matter. The motion in limine is DENIED, and the supplement does not alter the Court's prior determination that a continuance is not warranted.

In his motion in limine, Dailey contends that audio recordings of jail calls should not be permitted to be introduced against him. Specifically, Dailey contends that his counsel did not receive the recordings until Friday, October 28, 2022. Counsel also indicates that in order to provide the recordings on the proper medium to Dailey, Dailey will not be able to listen to the calls until November 3, 2022 or November 4, 2022. In that respect, the Court notes that Dailey will be transported to this courthouse for a 10:00 a.m. hearing on November 4, 2022. The hearing will conclude by 11:30 a.m. The Court will ensure that Dailey remains in the courthouse for the remainder of the day giving Dailey and counsel more than ample opportunity to listen to the recordings and discuss any strategy needed for trial purposes. Accordingly, the motion in limine is DENIED.

Dailey has also filed a supplement to his oral motion to continue the trial in this matter. The supplement appears to show that Dailey's second counsel in this matter inadvertently sent him a blank CD rather than a CD containing discovery. The supplement also appears to indicate that Dailey's current counsel provided discovery via a flash drive – a device that the prison does not permit detainees to use and possess.

Initially, the Court notes that Dailey is now on his third attorney. Following his arrest on October 29, 2021, Dailey was arraigned that same day and appointed counsel. Dailey's first counsel requested discovery from the Government on November 18, 2021. Following several extensions, counsel filed a motion to suppress on February 11, 2022. On February 20, 2022, counsel moved to withdraw at Dailey's request. The Court held a hearing on counsel's request to withdraw, granted the motion, and appointed Dailey his second attorney on May 9, 2022. New counsel amended and/or supplemented the motion to suppress on July 21, 2022. On July 28, 2022, the Court conducted an evidentiary hearing at which Detective Thomas Kloock offered testimony. The Court orally denied the motion at the close of the hearing.

During the early part of August, Dailey's attorney sought Court approval for independent drug testing and attempted to negotiate a plea agreement with the Government. Unable to reach an agreement amenable to Dailey, his second counsel sought to withdraw on August 23, 2022. On August 25, 2022, the Court granted the motion to withdraw and appointed Dailey's current counsel. Importantly, at the time current counsel accepted the appointment, trial was already set in this matter for November 7, 2022.

Shortly after this appointment, on September 6, 2022, the Court conducted a status conference and reiterated that the trial date in this matter would not be continued absent good cause. To date, no good cause has been shown. In reaching this decision, the Court notes the straightforward allegations in this matter. Officers allege that Dailey was stopped at a gas station on February 5, 2021, because he was driving a vehicle that fled from police on the prior evening. Officers allege that when Dailey was removed from the vehicle, Dailey had crack cocaine and over \$1,100 in his pockets. Moreover, officers allege that after receiving his Miranda rights, Dailey admitted to possessing the crack cocaine and the baggies of drugs in plain view in the vehicle. As such, the case does not appear to present any complex or complicated legal or factual issues. Therefore, current counsel and Dailey have had more than adequate time to prepare a defense in the matter. To the extent that Dailey's supplement seems to suggest that current counsel was unaware that discovery could not be provided to Dailey via a flash drive, the Court finds such an assertion to lack credibility. It defies logic to suggest that the Federal Defender's Office for this District was unaware of such a policy at the primary facility used to detain pretrial defendants. The assertion that this policy delayed Dailey's review of discovery, therefore, does not support continuance of the trial.

Based upon the above, Dailey's motion in limine (Doc. 53) is DENIED, and the Court reaffirms that trial will proceed in this matter as scheduled on November 7, 2022.

IT IS SO ORDERED.

November 4, 2022

/s/ Judge John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT COURT